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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.T., et al., Persons Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

NICOLE T.,

Defendant and Appellant.

D077162

(Super. Ct. No. NJ15564A-C)

APPEAL from orders of the Superior Court of San Diego County, Michael  
Imhoff, Commissioner. Affirmed.

Emily Uhre, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Thomas E. Montgomery, County Counsel, Caitlin E. Rae, Chief Deputy County Counsel, and Patrice Plattner-Grainger, Deputy County Counsel, for Plaintiff and Respondent.

Nicole T. (Mother) appeals from orders sustaining petitions filed by the San Diego County Health and Human Services Agency (the Agency) under Welfare and Institutions Code<sup>1</sup> section 300, subdivision (b)(1) (§ 300(b)(1)), on behalf of her minor sons, J.T., I.T., and C.A. (collectively, the children). Mother contends that substantial evidence did not support the court's jurisdictional findings. She also asserts that the evidence did not support the court's jurisdictional finding under section 300, subdivision (a) (§ 300(a)) as to C.A. We conclude that substantial evidence supports the jurisdictional findings under section 300(b)(1) and affirm. We decline Mother's request to review the jurisdictional findings under section 300(a).

## I.

### FACTUAL AND PROCEDURAL BACKGROUND

Between March 2019 and May 2019<sup>2</sup> the Agency received two referrals regarding bruises on C.A. and one referral involving a physical altercation between Mother and her neighbor, Julie, after Mother had been drinking. At the end of May, Mother and Father A. had a physical altercation while the children slept. In early June, Mother drove to Father A.'s home with one child in the car while intoxicated. Later that month, Mother

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Undesignated date references are to 2019.

and Father A. entered into a voluntary case with the Agency. Although Mother participated in individual therapy, she declined to meet with a substance abuse specialist or join a parenting class.

In late August, the Agency filed petitions under section 300(b)(1) alleging that the children were at risk of abuse or neglect due to Mother's excessive alcohol use, the physical altercation with her neighbor, and her act of driving under the influence. As to C.A. only, the petition alleged under section 300(a) that this child was at risk for serious non-accidental physical harm due to the parents' excessive discipline.

At a contested detention hearing in late August, the court made a prima facie finding that the allegations in the petitions were true and detained the children with Mother on a number of conditions, including that Mother (1) not have alcohol in the home, (2) not drink alcohol, and (3) not use corporal punishment. At the contested jurisdiction and dispositional hearing in early November, the court heard testimony from the social worker and Mother. The court found the allegations of the petitions true by clear and convincing evidence and proceeded to disposition. It declared the children dependents under the court's supervision. The court placed C.A. in the physical custody of both his parents, placed the other two boys with Mother, and ordered family maintenance services.<sup>3</sup> Mother timely appealed.

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<sup>3</sup> Mother and Father A. are unmarried and live apart. J.T. and I.T. have different fathers who do not have contact with the children and are not involved in this action.

## II.

### DISCUSSION

#### A. General Legal Principles

Dependency jurisdiction is taken over the child, not the parent. (§ 300; see *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) "[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring [the child] within one of the statutory definitions of a dependent." (*In re Alysha S.*, at p. 397.) In a dependency proceeding, the Agency must prove by a preponderance of the evidence that the child who is the subject of the petition comes under the court's jurisdiction. (§ 355.) A juvenile court may exert dependency jurisdiction over a child if (1) "[t]he child has suffered, or there is a substantial risk the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent" (§ 300(a)), or (2) "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm . . . , as a result of the failure or inability of his . . . parent . . . to adequately supervise or protect the child" (§ 300(b)(1)).

" 'In reviewing the jurisdictional findings . . . we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.' " (*In re R.T.* (2017) 3 Cal.5th 622, 633.) On appeal, the parent has the burden of showing that there is insufficient evidence to support the

juvenile court's jurisdictional findings. (*In re T.V.* (2013) 217 Cal.App.4th 126, 133 (*T.V.*).

*B. Substantial Evidence Supports the Jurisdictional Findings under Section 300(b)(1)*

Mother contends that substantial evidence does not support the juvenile court's jurisdictional finding under section 300(b)(1) because the record does not show a causal nexus between her conduct and a current risk of harm to the children. She argues that the fight with her neighbor did not occur in front of the children and the record does not show alcohol abuse.

To establish jurisdiction under section 300(b)(1), the Agency must show: "(1) neglectful conduct, failure, or inability by the parent; (2) causation; and (3) serious physical harm or illness or a substantial risk of serious physical harm or illness." (*In re L.W.* (2019) 32 Cal.App.5th 840, 848.) The third element requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future. (*In re Jesus M.* (2015) 235 Cal.App.4th 104, 111.) Standing alone, past conduct is insufficient to establish a substantial risk of harm and "there must be some reason beyond mere speculation to believe [the past conduct] will reoccur." (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564-565.) The court, however, " 'need not wait until a child is seriously abused or injured to assume jurisdiction' " and "[a] parent's past conduct is a good predictor of future behavior." (*T.V., supra*, 217 Cal.App.4th at p. 133.)

The Agency does not argue that the children suffered any physical harm due to Mother's alcohol use, and the record contains no evidence to support such a finding. Accordingly, we consider whether the record contains evidence showing a substantial

risk of serious physical harm in the future. We conclude that ample evidence supports the juvenile court's finding that Mother's alcohol abuse endangered the children's physical health and safety and placed them at risk of serious physical harm.

Ben H., Father A.'s cousin, lived with Mother for almost a year and moved out in April. He reported seeing Mother drive under the influence of alcohol, with children in the car, " 'more than once.' " He stated that Mother " 'drinks excessively' " and drank vodka about five days a week.

Julie has known Mother for approximately two years and saw Mother about twice a week. Julie described Mother as a functioning alcoholic, frequently saw Mother drinking shots in the middle of the day, and drinking at night. The last time she saw Mother was in May when she had been watching the children while Mother went to a night club. Julie stated that Mother returned intoxicated and punched her in the face. Mother received a citation, but was not prosecuted.

On May 26, Father A. watched the children for Mother at her home. Mother came back "drunk . . . stumbling and slurring her speech." The couple got into a physical altercation and Father A. was later arrested for this incident. In the early morning hours of June 4, Mother admitted driving to Father A.'s home while under the influence of alcohol (the June incident) when I.T. was in the car. Police administered two breathalyzer tests that revealed blood alcohol levels of .196 and .197.

In stark contrast to these reports, the maternal aunt denied having any concerns regarding Mother's alcohol use. The maternal grandparents denied ever seeing Mother use alcohol, but the maternal grandmother later admitted knowing that Mother drank

wine. The maternal grandmother also told the social worker that Mother " 'keeps telling me she's not an alcoholic. . . . ' "

Although the social worker did not believe that Mother had an alcohol addiction, he stated that alcohol negatively impacted Mother's life, citing the alcohol related incidents with Julie and Father A. He expressed concern regarding how Mother's substance abuse affected the children, stating that Mother has not been cooperative, she made it difficult to meet with the older children, and minimized the Agency's concerns.

At the time of the jurisdictional hearing, Mother reportedly had not used alcohol since the June incident and the social worker verified that Mother did not have alcohol in her home. Nonetheless, the social worker still had concerns regarding Mother's alcohol consumption because Mother had not participated in any substance abuse treatment, agreed to participate in any such services, or attended any Alcoholics Anonymous meetings or "12 step" meetings. Mother saw a substance abuse specialist for an assessment, but did not meet medical necessity for treatment. The social worker, however, reviewed this paperwork and opined that Mother was "less than truthful" during the assessment when she claimed that before the June incident she drank only one to two times a month.

The social worker reported that Mother displayed "[a] high degree of minimization, [and] a lack of insight" regarding her alcohol use. This concerned the social worker because he has learned through his education, training, and experience that it is very difficult for people to stop using alcohol, and people use alcohol as a coping

mechanism. He wanted some input from Mother regarding what she replaced alcohol with and her coping mechanisms so that she does not start using alcohol when stressed.

On this record, the juvenile court reasonably could conclude that Mother's alcohol use caused her to engage in behaviors jeopardizing her own safety and the safety of the children on numerous occasions. The court described the June incident as not an example of using poor judgment, but a situation where Mother was "incredibly fortunate that something serious didn't happen." The court questioned Mother's insight regarding her alcohol abuse, stating:

"[W]hy [would] a loving mother who cares for her children . . . consume enough alcohol to be two, if not three, times the legal limit and drive a young child in the car, what caused that?

"Even if it was an isolated incident, having sustained a domestic violence injury just days before, showing up at the perpetrator's address unannounced, so heavily under the influence with yet another child, really begs the need to get an understanding. If we don't do that then I think the mother is on borrowed time.

"She can white knuckle this. She can justify it all she wants. But what an incredible tragedy to have a good mother with such potential with children that can derive such benefit simply because we can't get answers to some questions."

Even assuming the truth of Mother's assertion that she has not used alcohol since the June incident and has no desire to use alcohol, the court's comments show that it considered Mother's lack of insight regarding her alcohol abuse as a serious risk factor for the children. The social worker explained that people use alcohol as a coping mechanism, it is difficult to stop using alcohol, and a concern exists that Mother will use alcohol when stressed. The social worker also noted Mother's denial of any alcohol

problem, minimization of the June incident, and the incident with Julie. "[D]enial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision." (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044.)

" 'The purpose of dependency proceedings is to prevent risk, not ignore it.' " (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.) The record, viewed most favorably to the juvenile court's order, establishes that Mother's history of alcohol abuse and refusal to participate in alcohol treatment presents a substantial danger to the physical safety of the children. Accordingly, the juvenile court appropriately assumed jurisdiction over them under section 300(b)(1).

*C. We Decline to Consider Mother's Challenge to the Jurisdictional Findings under Section 300(a) as to C.A.*

Mother contends that the record lacks substantial evidence that she inflicted serious physical harm on C.A. and claims that her knowledge of Father A. spanking C.A. does not support jurisdiction under section 300(a), which encompasses the intentional infliction of serious physical harm. She argues that we should exercise our discretion to consider her contention because she has completed at least one year of nursing school, a finding under section 300(a) would put her at risk of being added to California's Child Abuse Central Index ("CACI"), and her presence on this list could affect her ability to obtain her nursing license or find work as a nurse.

Under the doctrine of justiciability, courts generally do not act upon or decide moot questions or abstract propositions, nor do they issue advisory opinions. (*In re I.A.*

(2011) 201 Cal.App.4th 1484, 1490 (*I.A.*.) "An important requirement for justiciability is the availability of 'effective' relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties' conduct or legal status." (*Ibid.*) "For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence," or is unchallenged. (*Id.* at p. 1492.) "However, we generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for the dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citation]; or (3) 'could have other consequences for the [the appellant], beyond jurisdiction' [citation]." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762.)

Father A. has not challenged the jurisdictional findings against him under section 300(a) and substantial evidence supports the jurisdictional finding under section 300(b)(1). As a result, even if we agreed with Mother that insufficient evidence supported the court's finding under section 300(a), the court properly exercised jurisdiction under section 300(b)(1). Thus, we cannot grant her any effective relief.

We decline to exercise our discretion to reach the merits of her arguments because the additional section 300(a) jurisdictional finding does not prejudice Mother. (*I.A.*, *supra*, 201 Cal.App.4th at p. 1495.) "The CACI consists of an index of all reports of child abuse and severe neglect submitted to the [Department of Justice] pursuant to the [Child Abuse and Neglect Reporting Act (the Act)] under Penal Code section 11169."

(*Saraswati v. County of San Diego* (2011) 202 Cal.App.4th 917, 921, fn. 1.) "Reports of suspected child abuse or neglect and the names of persons making them are deemed confidential." (*In re C.F.* (2011) 198 Cal.App.4th 454, 462 (*C.F.*)). The Department of Justice makes the CACI lists available to county agencies and others conducting background investigations of people seeking employment or volunteer work and to out-of-state agencies investigating prospective foster or adoptive parents. (See Pen. Code, § 11170, subds. (b)(4) & (8), (e)(1).)

Mother has not shown that eliminating the court's findings under section 300(a) would make any meaningful difference to her circumstances. An individual may be listed in the CACI based on subjecting a child to a "substantial risk" the child "will suffer serious physical harm or illness," i.e., the basis for a finding under section 300(b)(1). (See Pen. Code, §§ 11165.3 [reportable severe neglect, as defined in Pen. Code, § 11165.2, can be based on " 'the willful harming or injuring of a child or the endangering of the person or health of a child,' " which "means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered"]; 11165.6 [reportable " 'child abuse or neglect' includes . . . *the endangering of the person or health of a child*, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4" (*Italics added.*)].) Thus, the Act applies not only to physical abuse under section 300(a)

but also to neglect under section 300(b)(1). (Pen. Code, § 11165.2 [" 'neglect' . . . includes both acts and omissions on the part of the responsible person"].)

Moreover, Mother's contention is entirely speculative. The Agency's reporting duty is triggered by an investigator's determination that, more likely than not child abuse has occurred, not by a juvenile court order sustaining a section 300 petition. (See Pen. Code, § 11165.12, subd. (b); *Gonzalez v. Santa Clara County Dept. of Social Services* (2014) 223 Cal.App.4th 72, 85.) Nothing in the record indicates the Agency has reported Mother to the Department of Justice. (*C.F., supra*, 198 Cal.App.4th at p. 462 [reporting agency must notify the known or suspected child abuser that the agency has reported him or her for listing on the CACI].) For these reasons, Mother's arguments regarding potential prejudice do not persuade us to reach the merits of her challenges to the juvenile court's jurisdictional order under section 300(a).

#### DISPOSITION

The orders are affirmed.

IRION, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.